



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document Reviewed (include title):

WAC 458-20-168 Hospitals, medical care facilities, and adult family homes

Date last reviewed: **May 26, 1999**

Current Reviewer: **JoAnne Gordon**

Date current review completed: **Dec. 12, 2002**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly describe the subject matter of the rule(s):

WAC 458-20-168 provides B&O tax reporting instructions to persons operating hospitals, medical care facilities, nursing homes, and adult family homes. The rule explains when such persons are responsible for collecting retail sales tax. It also identifies certain retail sales and use tax exemptions that may apply to persons operating these facilities.

2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs:
(Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

YES	NO	
X		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)



X		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Chapter 23, Laws of 2001, revised RCW 82.04.4297 to expand the deduction for amounts received by a health or social welfare from a governmental source for rendering health or social welfare services by allowing nonprofit and public hospitals to deduct amounts received from an intermediary entity as long as the payments were derived from qualifying programs.

Chapter 314, Laws of 2002, removed the expanded deduction from RCW 82.04.4297 and re-established the deduction in a new section codified as RCW 82.04.4311.

The following WTDs, issued after the previous review, should be incorporated when the rule is next revised:

- **Det. No. 00-157, 21 WTD 1 (2002).** Taxpayer who provided 24-hour home care services to clients in their own residences does not qualify for the B&O tax exemption afforded to adult family homes under RCW 82.04.327. The exemption applies only to private homes, not to home health agencies entering into private homes to provide services.
- **Det. No. 98-210, 19 WTD 109 (2000).** Drugs sold and physically administered by a provider of home-based health care services are part of the services performed and income derived from such activities is subject to B&O tax under the service and other activities classification. Income from the sale of drugs for patient self-administration or by caregiver is subject to B&O tax under the retailing classification.

At such time as Rule 168 is revised, the rule should incorporate *Lacey Nursing Center vs. Department of Revenue*, 103 Wn. App. 169, 11 P.3rd 839 (20002), in which the Court determined that nursing homes do not rent or lease rooms to their patients.

3. Additional information: Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

WAC 458-20-168 currently discusses the B&O tax reporting classification for public or nonprofit hospitals, however, it does not provide the statutory cite for the classification. The statutory cite, RCW 82.04.260(12), should be added when the rule is revised.



With respect to the discussion for nonprofit corporations and associations receiving income from performing research and development activities, the rule provides a statutory cite that has changed. The correct cite, RCW 82.04.260(3), should be incorporated when the rule is revised.

At such time as the rule is revised, consideration should be given to incorporating how tax applies when third-party persons contract to provide services for hospital, nursing homes, and similar institutions. Such information would be consistent with *Pilcher v. State*, 112 Wn. App. 428, 49 P.3d 947 (2002). *Pilcher* contracted to provide medical services in and to manage the emergency room operations of a hospital. The Court of Appeals upheld the lower court's judgment that *Pilcher* was liable for the B&O tax on the gross income received from the hospital without deduction for amounts paid to other physicians with whom he in turn contracted for services.

4. LISTING OF DOCUMENTS REVIEWED: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

- **RCW 82.04.4297 Deductions- Compensation from public entities for health or social welfare services-Exception.**
- **RCW 82.04.4311 Deductions - Compensation received under the federal Medicare program by certain nonprofit and municipal hospitals.**
- **RCW 82.04.260 Tax on manufacturers and processors of various foods and by-products -- Research and development organizations -- Nuclear fuel assemblies -- Travel agents -- Certain international activities -- Stevedoring and associated activities -- Low-level waste disposers -- Insurance agents, brokers, and solicitors--Hospitals.**

Interpretive statements (e.g., ETAs and PTAs):

Court Decisions:

- *Lacey Nursing Center vs. Department of Revenue*, 103 Wn. App. 169, 11 P. 3rd 839 (2000). Taxpayer claimed a portion of revenue exempt from B&O tax as the rental of real estate. Appellate court upheld decision of trial court that the relationship between a nursing home and its residents is one of a license to use and not a rental of real estate.
- *Pilcher v. State*, 112 Wn. App. 428, 49 P. 3d 947 (2002). Taxpayer claimed deduction from gross income for amounts paid to others for providing medical services for which the taxpayer was liable. Amounts paid to third party physicians did not qualify as nontaxable advances or reimbursements.

Board of Tax Appeals Decisions (BTAs):



Administrative Decisions (e.g., WTDs):

- **Det. No. 00-157, 21 WTD 1 (2002).** Clarifies that the B&O tax exemption afforded to adult family homes under RCW 82.04.327 does not apply to home health agencies entering into private homes to provide services.
- **Det. No. 98-210, 19 WTD 109 (2000).** Clarifies that income derived the sale and administration of drugs by a home-based health care provider is subject to service and other activities B&O tax as part of the services rendered.

Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Sales and rentals to Medicare and Medicaid patients, *Tax Topics*, April-June 1991**
- **Clarification of information about sales and rentals to patients by Medicare and/or Medicaid, *Tax Topics*, July-Sept. 1991**
- **Medical records and retail sales tax, *Tax Facts*, June 1996**

4. Review Recommendation:

- X **Amend**
- _____ **Repeal** (Appropriate when repeal is not conditioned upon another rule-making action.)
- _____ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- _____ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

For reasons identified in the previous review, Rule 168 should be revised. The revised rule should also correct statutory cites and incorporate information from recent legislative changes, court decisions, and Washington Tax Decisions.



5. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

_____ 1
_____ 2
_____ 3
_____ 4